IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 122 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAVITABEN G SURTANI, WIDOW OF DECEASED GOVINDJI SURTANI
Versus
STATE OF GUJAART

Appearance:
1. Special Criminal Application No. 122 of 2002
MR NITIN M AMIN for Petitioner
MR ND GOHIL, APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/07/2002

ORAL JUDGEMENT

1. In this petition, filed under Article-226/227 of the Constitution of India, petitioner who is the wife of deceased Govindji Surtani, who has been allegedly murdered by builder-lobby with the help of 'gundas' and

other persons has prayed for further investigation into the cases referred to in Annexure-'A' to the petition, by a Special Squad as ordered by the Director General of Police, Gujarat State, Gandhinagar and submit its report to this Court. It is also prayed that in alternative to direct the Central Bureau of Investigation to investigate into the cases and applications referred to in Annexure-'A' to the petition and thereafter to conduct the trial afresh, on the grounds stated in the petition.

2. The main ground sought to be canvassed in this petition is that, the Deputy Director General of Police, Gujarat State, vide office order dated 13th December, 2000, ordered that the Special Squad headed by Mrs.Geetaben Johri, Additional Commissioner of Police shall investigate and inquire into the offences registered with the Baroda City Police Station, which are mentioned in the said letter and also to arrest the accused. Notwithstanding the above order is passed the crime registered vide CR No.157/99 for commission of the offence of murder of Govindram Surtani, husband of the petitioner and crime registered vide CR No.188/99 for commission of the offence of murder of Bhagwandas Meghwani have not been investigated by the Special Squad headed by Mrs.Geetaben Johri. It is also averred in the petition that police officials in connivance with the builder lobby have not booked the real culprits and therefore also further investigation in connection with the crime registered vide CR No.157/99 AND CR No.188/99 is required to be made by the Special Squad headed by Mrs. Geetaben Johri, Additional Commissioner of Police. Various incidents have been highlighted in the memo of the petition showing the strength of the builder lobby, who with the help of 'gundas' have murdered Govindram Surtani, husband of the petitioner and Bhagwandas Meghwani. It is also stated in the petition that the deceased husband of the petitioner had lodged FIR bearing I CR No.144/99 with the Vadodara Police Station against Dolat Harjani and Mukesh Harjani. Moreover, when the deceased Govindram Surtani was going to give his statement, Dolat and Mukesh Harjani assaulted him, snatched away his gold chain and administered threats not to give the evidence against the builder lobby. In short, it is stated in the petition that the police in connivance with the builder lobby has not properly investigated all the crimes mentioned in the letter dated 13th December, 2000 (Annexure-'A' to the petition) and therefore further investigation may be made by the Special Squad headed by Mrs.Geetaben Johri, Additional Commissioner of Police or alternatively investigation may be made by the Central Bureau of Investigation.

Therefore, it is prayed to pass appropriate order as prayed for in the petition.

3. Mr.Nitin Amin, learned advocate for the petitioner, during the course of his oral submission, raised similar contentions which have been canvassed in the memo of the petition. Therefore, it is not necessary to reproduce them again.

4. Mr.ND Gohil, learned APP for the respondent State of Gujarat as well as other respondents submitted that the prayer made in this petition has been considered in two previous petitions and both the petitions came to be withdrawn. Therefore, on the same cause of action, this third petition is not maintainable. Besides this, he has also contended that the order dated 13th December, 2000 passed by the Deputy Director General of Police, Gujarat State, Gandhinagar directing to investigate the crimes mentioned in that letter by Mrs.Geetaben Johri, Additional Commissioner of Police has been fully complied with and therefore there is no substance in the challenge made in this petition, which deserves to be dismissed.

5. I have considered the submissions advanced by Mr.Nitin Amin, learned advocate for the petitioner and Mr.ND Gohil, learned APP for the respondent nos.1 to 5 i.e. State of Gujarat and other police personnels. I have also perused the averments made in the memo of the petition, grounds set out therein and various documents annexed with the petition including the orders passed by this Court in three petitions filed by the present petitioner. I have also perused the report made by Mrs.Geetaben Johri, Additional Commissioner of Police, which is supplied by Mr.ND Gohil, learned APP during the course of his submission.

6. At the outset it may be appreciated that the present petitioner has filed Special Criminal Application No.671/2001, wherein similar reliefs have been prayed for. The said petition came up for hearing before this Court (Coram: A.M.Kapadia, J.). This Court vide order dated 17th October, 2001 passed the following order :

> "Mr.RJ Goswami, learned advocate for the petitioner seeks leave to withdraw the petition in view of the fact that the investigation of the cases registered vide CR Nos.131/2000, 55/2000 and 292/2000 with Baroda City Police Station, conducted by a Special Squad constituted as per the order dated December 13,2000 by the Deputy Director General of Police, Gujarat State, is now

over, as per the statement made by Mr.KT Dave, learned APP. Mr.KT Dave, learned APP states that he has no objection if leave to withdraw the petition is granted. He further states that police protection is also granted to the petitioner as per the aforesaid order. In view of this, leave to withdraw the petition is granted. Petition stands disposed of as it is withdrawn."

The present petitioner has also filed Criminal Misc. Application No.4059/2001, wherein also similar reliefs were claimed. The said petition was listed for hearing before this Court (Coram: M.H.Kadri, J.). This Court vide order dated 6th September, 2001, passed the following order :

"After arguing the application for considerable length, learned counsel for the petitioner seeks permission to withdraw this application. Permission is granted.

2. At this stage, learned APP Mr.SJ Dave has submitted that though the application filed by the learned Public Prosecutor before the Sessions Court for further investigation was rejected, the State has not filed any appeal or revision against that order, but right of further investigation may be reserved for the prosecution State. It would be open for the State or Investigating Agency to make furtehr investigation and submit its report before the learned Sessions Judge.

3. With these observations, the application stands disposed of as withdrawn. Notice discharged. Ad-interim relief stands vacated."

7. According to me, in view of the aforesaid orders passed by this Court in two petitions which were filed by the present petitioner wherein also similar relief was claimed which is claimed in this petition, the petition deserves to be dismissed on this sole ground. However, the question arises for consideration of this Court is as to whether the order dated 13th December, 2000 passed by the Deputy Director General of Police, Gujarat State directing Mrs.Geetaben Johri, Additional Commissioner of Police to inquire, investigate and to arrest the accused has been complied with or not with reference to C.R. mentioned in that order.

8. Mr.ND Gohil, learned APP has, during the course of his submission, shown three letters addressed by Mrs.Geetaben Johri, Additional Commissioner of Police, Baroda City to the Deputy Director General of Police, Gujarat State, Gandhinagar, for perusal of this Court.

9. On perusal of the letter dated 7th February, 2001, it can be assembled that so far as the crime registered vide CR No.157/99 for commission of the offence of murder of Govindram Surtani, husband of the petitioner and the crime registered vide CR No.188/99 for commission of the offence of murder of Bhagwandas Meghwani are concerned, pursuant to the recording of the FIR, Deputy Commissioner of Police has already concluded the investigation and the accused of both the crimes have been sent to judicial custody, and according to her, investigation was done in accordance with law. So far as the rest of the offences registered vide CR Nos.299/2001, 290/2000, 55/2000, 331/2000 and 131/2000 are concerned, investigation has been made in accordance with law, culprits are booked and further investigation is going on.

10. Now turning to the second letter dated 27th February, 2001, it is stated therein that the Special Squad constituted as per the order dated 13th December, 2000 is keeping constant watch on the culprits and the Special Squad would arrest the accused.

11. Now so far as the last letter dated 5th May, 2001 is concerned, it is mentioned therein that the progress of crimes registered vide CR Nos.157/99 and 188/99 has been stated at length.

12. On overall analysis of the aforesaid three communications, it is unequivocally established that the Special Squad headed by Mrs.Geetaben Johri, Additional Commissioner of Police, Baroda City has taken over the charge of all the crimes mentioned in the said letter as well as CR Nos.157/99 and 188/99. Therefore, according to me, the order dated 13th December, 2000 is fully complied with. Therefore, the apprehension made by the present petitioner is not well founded.

13. Besides this, in two previous petitions preferred by the present petitioner, similar reliefs were claimed and those two petitions came to be withdrawn, to which reference is made in the earlier paragraph of this judgment. Therefore, this third petition claiming similar reliefs is not maintainable.

14. On overall view of the matter, I am fully satisfied that the order dated 13th December, 2000 passed by the Deputy Director General of Police, Gujarat State, Gandhinagar has been fully complied with and investigation is made under the supervision of the Special Squad headed by Mrs.Geetaben Johri, Additional Commissioner of Police, Baroda City.

15. Seen in the above context, there is no valid reason or justifiable ground to entertain this petition, which deserves to be dismissed.

16. For the foregoing reasons, petition fails and accordingly it is dismissed. Rule is discharged. Ad-interim relief granted in terms of Paragraph 16(C) shall stand vacated.

17. At this stage, Mr.Nitin Amin, learned advocate for the petitioner urged to continue the interim relief for further period of four weeks hereof to enable him to approach the higher forum.

18. Mr.ND Gohil, learned APP states that recording of evidence in Sessions Case No.302/99 arising out of CR No.157/99 is concluded. The further statement of the accused is also recorded. Arguments are also heard and the Sessions Case is now awaited for final order. Besides this, the grievance made by the petitioner with regard to the letter dated 13th December, 2000 has been fully complied with as the investigation is thoroughly made by the Special Squad headed by Mrs.Geetaben Johri, Additional Commissioner of Police. Therefore, the request made by Mr.Amin to continue the interim relief for further period of four weeks may be rejected.

19. On the facts and circumstances emerging from the records of the case and as this Court has held that there is no substance in the challenge made in this petition and more particularly the grievance voiced in this petition with respect to non-compliance of the order dated 13th December, 2000 passed by the Deputy Director General of Police is not well founded, the request made by Mr.Amin to continue the interim relief for further four weeks can not be entertained and the same is rejected.

(A.M. Kapadia, J.)

/sakkaf